



Interagency Committee for
OUTDOOR RECREATION
SALMON RECOVERY
FUNDING BOARD

FUNDED PROJECTS:

*POLICIES & THE
PROJECT AGREEMENT*

7

May 10, 2002

IAC's Mission



...Is to foster the protection and enhancement of Washington's natural and outdoor recreation resources for current and future generations. The Board provides funding, technical assistance, research and policy development, coordination, advocacy, and encourages long-term stewardship.

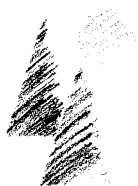
SRFB's Mission



The Board supports salmon recovery by funding habitat protection and restoration projects, and related programs and activities that produce sustainable and measurable benefits for fish and their habitat.

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SECTION 1 – INTRODUCTION

Manual Conventions

IAC (Interagency Committee for Outdoor Recreation) refers to a board and a state agency. The agency or office staff provides grant and administrative support to the IAC Board and SRFB (Salmon Recovery Funding Board), as directed under RCW 79A.25.240. The policies in this manual guide both of these independent, Executive branch state government boards. As a reference aid, this manual uses the following conventions:

- *Director* – The Office Director or the Director's designee.
- *IAC* – Interagency Committee for Outdoor Recreation's Board.
- *IAC-SRFB* or *Board*– Refers to an independent action by the appropriate Board.
- *Office* – Director and staff supporting both IAC and SRFB.
- *SRFB* – Salmon Recovery Funding Board.

Background

This manual contains policies that apply to agencies and organizations awarded funds by IAC-SRFB. It is for use by applicants, sponsors¹, IAC, SRFB, and the Office. Use it for *all* grant programs, current and past, including:

- Boating Facilities (BFP)
- Boating Infrastructure Grant Program (BIG)
- Firearms and Archery Range Recreation (FARR)
- Hatchery Reform Program
- Land & Water Conservation Fund (LWCF)
- National Recreational Trails Program (NRTP)
- Nonhighway & Off-Road Vehicle Activities (NOVA)
- Riparian Habitat Program (RHP)
- Salmon Recovery
- Washington Wildlife & Recreation (WWRP)
- Youth Athletic Facilities (YAF)

For more guidance, refer to the individual policy manuals for these programs.

Related Publications

There are many publications designed to explain these programs, including:

- Summary brochures and fact sheets that describe each program's goals, funding, and schedules
- Program Policy Manuals
- Technical assistance guides
- Statutes and rules, and
- State plans that give broad policy background.

Contact us to obtain a complete list of these free publications. All publications can be made available in an alternative format.

¹ An applicant becomes a sponsor on execution of an IAC-SRFB Project Agreement, after funding has been approved.

Manual Authority Authority for the information in this publication may be found in the following statutes¹ and rules²: RCW 46.09.240(1), 79A.15.070, 79A.25.080(2), 79A.25.210, and Title 286 WAC. IAC's board adopted the policies in this manual in a public meeting. SRFB has also accepted these policies.

Contact Information IAC-SRFB encourages anyone interested in these programs to contact its Office at:

Natural Resources Building	IAC Phone (360) 902-3000
1111 Washington Street, Floor 2 East	SRFB Phone (360) 902-2636
P.O. Box 40917	FAX (360) 902-3026
Olympia, Washington 98504-0917	TDD (360) 902-1996
	E-mail info@iac.wa.gov
	E-mail salmon@iac.wa.gov
	http://www.wa.gov/iac/

¹ Same as RCW, the *Revised Code of Washington*, statutes enacted by the legislature.

² Same as WAC, *Washington Administrative Code*, adopted by state agencies, often to implement a statute.

SECTION 2 – GENERAL POLICIES

1. Project Approval And Authorization To Proceed

The *sponsor* may *not* proceed with an IAC-SRFB approved project before executing a Project Agreement with IAC-SRFB. To do so may render the project or project elements ineligible for reimbursement. Review policy manuals 3 and 4 for eligible pre-agreement and retroactive costs.

The Project Agreement will be prepared in accord with the components contained in the sponsor's application as approved by IAC-SRFB, and forwarded for execution. An example of the Project Agreement begins on page 15—*The terms and conditions should be carefully reviewed.*

The sponsor will be notified of IAC-SRFB action of project approval shortly following the funding meeting.

2. Successful Applicant Workshops

Of particular importance to those awarded funding are the Office's "*Successful Applicant Workshops*," conducted soon after grants are announced. Participants receive important information on:

- Project sponsor responsibilities— i.e. compliance with the Project Agreement.
- Amendments to the Agreement — i.e. project changes, time extensions, and cost increases.
- Land acquisition procedures — i.e. appraisals, appraisal reviews, deed of right, offer to purchase, land donations, title insurance, etc.
- Development/restoration projects — i.e. construction plans, barrier-free design requirements, bid procedures, donations, specifications, etc.
- Planning, education/enforcement and maintenance/operation projects — i.e. reporting requirements, eligible costs, etc.
- Project implementation — i.e. billings, milestones, progress reports, inspections, long term compliance, etc.

3. Grant Time Limits & Extensions

The IAC-SRFB policy is that sponsors complete funded projects promptly. For this reason, Office staff, with applicant assistance, will establish a timetable for project completion, including milestones and a project completion date. To avoid the risk of IAC-SRFB or the Director withdrawing the grant, and to help ensure reasonable but timely project completion, accountability, and the proper use of public funds, the following must be accomplished:

Application Phase:

- Applicants will only submit projects likely to be completed within four years (IAC) or five years (SRFB) of the grant award.

- ▶ Applicants must provide reasonable assurance that the project can be completed within a reasonable timeframe, which does not exceed the board approved implementation period. For example,
 - property is in escrow,
 - sponsor has obtained a signed *Waiver of Retroactivity*,
 - appraisals and review completed,
 - option agreement(s) signed,
 - hazardous substances review completed,
 - environmental assessment completed,
 - permits in-hand,
 - bid documents prepared, etc.
- ▶ At least 30 days before the IAC funding meeting, when requested by the Office, applicants must provide written certification of matching fund availability.

Post Approval Phase:

- ▶ Applicants must submit the post approval materials, described in the grant Application Manual 5, within 90 days of funding approval.

With Office assistance, applicants must develop milestones and a timeline that does not exceed four years (IAC) or five years (SRFB). Milestones will be included in the Project Agreement.

Implementation Phase:

- ▶ The Office monitors critical project milestones (for example, ordering appraisals and reviews, starting construction, etc.). Unsatisfactory progress may be cause for project termination or other remedies (*Project Agreement—Termination and Other Remedies*). Any Office decision may be appealed to the IAC-SRFB.
- ▶ The Director may extend projects to a maximum of four years (IAC) or five years (SRFB) from the original IAC-SRFB grant award. Requests for extensions that would exceed this period may be referred to IAC-SRFB for action.
- ▶ Extension requests must be in writing and provided to the Office not less than 30 days before expiration of the project's completion date. The request must (a) justify the need and (b) commit to a new set of specified milestones. (See the sample *Milestone Status Tracking Sheet* on page 22.

4. Project Agreement Amendments

The Project Agreement may be amended by execution of a Project Agreement Amendment. Amendments for minor changes in scope and extensions to the project period may be authorized by the Office. Major changes in scope for acquisition, development/restoration, and non-capital projects may be authorized only by IAC-SRFB. All amendment requests shall be made in writing and must include detailed justification.

5. IAC Fund Allocations

If a project is terminated or completed under budget, as soon as possible, the Office will allocate the returned funds to an alternate project. IAC will lapse funds only if no authorized uses remain.

- 6. Additional Rules & Instructions** IAC-SRFB may issue additional or modified rules, instructions, interpretations and guides from time to time as it believes necessary for the effective conduct of the grant program. Such changes will apply to all projects. Whenever possible, sufficient lead time will be given between the announcement and the effective date to minimize impacts to projects already in process at the time of announcement.
- 7. Reporting** In addition to billing reports, from time to time, the Office may require the sponsor to submit a written status report summarizing the progress to date on all active projects. In addition, sponsors of completed projects are required to report on specific matters whenever requested to do so by the Office.
- 8. Cost Increases: IAC** On occasion, the cost of completing a project exceeds the amount written into the Agreement. Such overruns are the responsibility of the project sponsor. If funds are available, however, and on written request, IAC will consider a cost increase. The Director may approve cost increase requests that do not exceed 10 percent of the total project cost. IAC will consider approval of other amounts.

IAC Acquisition Projects. Acquisition project cost increases must meet the following criteria:

- ▶ The sponsor has diligently pursued the acquisition at the estimated fair market value, as appraised and reviewed.
- ▶ An appraisal, developed using a technique accepted by IAC (see Manual 3, *Acquiring Land: Policies*), supports the increased real market value.
- ▶ A written report from the sponsor explains any relocation cost over-runs.

An individual parcel review is the basis for any land acquisition cost increases. Compensation for the property and direct relocation cost is the basis for any condemnation increases allowed. Court or legal costs are not eligible for reimbursement.

IAC Development/Restoration and Non-Capital Projects. The project's *total approved cost* is the basis for such cost increases which must meet the following criteria:

- ▶ The sponsor must have fully explored all practical alternatives to completing the intent of the Agreement.
- ▶ The sponsor has had little control over the condition(s) causing the overrun.
- ▶ Any increase must only be used for elements in the Project Agreement.

A sponsor must obtain IAC or Director approval for any significant change in project scope and/or design that results a cost increase request. This approval must be granted prior or simultaneously to the cost increase.

**9.
Construction Plans &
Specifications**

One copy of all construction plans and specifications must be submitted to the Office as follows:

- ▶ Contract Construction - submit at least two weeks before advertising for bids.
- ▶ Force Account (In-Kind) and Donation Construction - submit at least two weeks before starting work.

The Office will review the plans and specifications and determine conformance with the Project Agreement.

**10.
Construction
Contract Change
Orders**

Sponsors must get prior written approval for all change orders that significantly change the scope of the Project as finally approved by IAC-SRFB.

Justification for change orders must be provided by the sponsor when requested by IAC-SRFB. This justification may include, but not be limited to, an explanation of the situation necessitating the change, the effects of the change, and the alternatives considered.

Change orders for projects assisted with LWCF funds are subject to National Park Service (NPS) approval before reimbursement of costs.

**11.
Standards of
Construction,
Operation, Use &
Maintenance**

Except for habitat conservation¹ areas that are generally closed to the public, sponsors must ensure that properties or facilities assisted with IAC funds, including undeveloped sites, are built, operated and maintained in accord with Section 26, page 34, of the Project Agreement:

Laws. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.

Safety. In a reasonably safe condition for the project's intended use.

Maintenance. Throughout its estimated life so as to prevent undue deterioration.

Nondiscrimination. In compliance with all federal and state nondiscrimination laws, regulations and policies.

Accessibility. In compliance with all state and federal accessibility guidelines.

Appearance. To appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.

Availability. For public use at reasonable hours and times of the year, according to the type of area or facility.

**12.
Site Inspections**

Interim. This inspection, normally coordinated with the sponsor, is made sometime during project implementation to help resolve any apparent or anticipated problems and to monitor project progress.

Final. Development/restoration projects only. This site review takes place

¹ In this context, the words *habitat conservation* refers to the programs in IAC's Habitat Conservation Account: *Critical Habitat, Natural Areas, Riparian Habitat, and Urban Wildlife Habitat*. It also refers to the Salmon Recovery Program.

after the sponsor requests a final payment and/or final inspection. This request must be made only *after* the project is complete, architects and/or engineers have made their inspection, and defects have been corrected. When the Office's final inspection certifies that the project is complete as described in the Agreement, the final payment, including retainage, will be made.

Post Completion Compliance. After the construction or land purchase, the Office staff will periodically check the site to ensure that it is being used according to the terms of the Project Agreement. After making special arrangements with the Office, the sponsor's staff may also perform these inspections.

**13.
Nonrecreational
Income Derived
During The Project
Agreement Period**

Any nonrecreational income that accrues to an IAC-SRFB assisted area during the project implementation period per the executed Project Agreement from sources other than the intended use will be used to reduce the *total cost* of the project.

Any such use of an area, especially as regards to the removal of timber or structures or the alteration of the land, must be consistent with the intended use of the area described in the Project Agreement.

**14.
Nonrecreational
Income Derived After
The Project
Agreement Period**

Any nonrecreational income accruing subsequent to the project completion date identified in the Project Agreement, including that from land management practices, must be used only to offset expenses of operation and maintenance of the facility funded or for park and recreation, habitat conservation, or salmon recovery capital acquisition and development/restoration unless precluded by state law. Such management practices must be compatible with, and complementary to, the outdoor recreation, habitat conservation, or salmon recovery use of the area and any practice which alters the use or purpose of the area is prohibited.

**15.
Concessions and
Leases**

A project sponsor may provide for the operation of an IAC-SRFB assisted facility by granting a concession agreement or lease to a private organization or individual under certain conditions. The project sponsor is responsible for assuring compliance with all applicable State and Federal requirements. Delegation or transfer of certain management or operational responsibilities to concessionaires or lessees does not relieve the project sponsor of any IAC-SRFB Agreement compliance obligations, including those relating to conversion of IAC-SRFB assisted property, page 10.

All concession or lease documents for the operation of IAC-SRFB assisted projects by private organizations or individuals must address the following:

1. In order to protect the public interest, the project sponsor must have clear ability to periodically review the performance of the lessee or concessionaire and terminate the lease or agreement if its terms and the provisions of the grant agreement, including standards of maintenance, public use, and accessibility are not met.
2. The document shall clearly indicate that the leased/concession area is to be operated by the lessee/concessionaire for public purposes in compliance with the provisions of the Project Agreement and/or the

Land and Water Conservation Fund Act and implementing guidelines.

3. The document shall require that the area be identified as being publicly owned and operated for public outdoor recreation and/or habitat conservation purposes on all signs, literature, and advertising and that the lessee/concessionaire be identified as such so as not to mislead the public into believing that the area is private. Signs should also be posted identifying the facility as being open to the public, General Provisions, Section 7.
4. The document shall require that all fees charged by the lessee/concessionaire to the public must be competitive with similar facilities.

Before execution of the lease/agreement between the sponsor and the lessee/concessionaire, the proposed lease/agreement must be reviewed and approved by the Office.

16. Granting Of Utility Permits

Subsequent to the determination that a pipe or power line will have no adverse effect on present and future public recreation or habitat use of a project site, any permit issued must:

1. Not be an easement giving property rights to a third party.
2. State that the pipe or power line will be underground.
3. Require that the third party give prior notice to and receive approval from the sponsor to enter the site for construction or maintenance. Regularly scheduled periodic maintenance checks and the method(s) of performance (which must not involve disruption of any recreation or habitat conservation function), must have prior approval on the basis of a schedule. Emergency maintenance would not normally require prior notification and approval. Adequate assurance of surface restoration is also necessary.
4. State a *duration* for construction and include language that allows setting a duration for reconstruction.

17. Federal Programs

Recipients of federal funds administered by IAC-SRFB are subject to the following OMB (Office of Management and Budget) Circulars. Circulars may be viewed on-line at:

<http://www.whitehouse.gov/omb/circulars/index.html#numerical>.

- ▶ Any sponsor that receive \$300,000 or more from any federal source must have OMB Circular A-133 audit. For state and local agencies, this is generally performed by the State Auditor's Office.
- ▶ Non-profit organizations that receive federal funds, regardless of the amount, are subject to the requirements of OMB Circular A-122, Cost Principles for Non-Profit Organizations.
- ▶ State, local, and federally-recognized Indian tribes are subject to the requirements of OMB Circular A-87, Cost Principles for State, Local and Indian Tribal Governments.
- ▶ Educational Institutions are subject to the requirements of OMB Circular

A-21, Cost Principles for Educational Institutions.

In addition, all recipients of federal Land and Water Conservation Fund grants must sign a CD-512 certification form regarding debarment, suspension, ineligibility, and voluntary exclusion—lower tier covered transactions and lobbying.

LWCF & BIG. In the event that funds from either of these programs have been recommended for the project, it will be necessary for the Office (IAC) to submit an application to the federal administrator, the National Park Service (NPS) or the US Fish & Wildlife Service . In such cases the sponsor is required to provide supplemental information. The Project Agreement between IAC and the sponsor will not be executed by the Office (IAC) until federal approval is received.

The General Provisions of NPS which are referenced in the Project Agreement (General Provisions Page 36, Section 31) apply to all approved projects utilizing LWCF.

SECTION 3 – CONVERSIONS

18. Conversion Policy

The Sponsor shall not at any time convert any real property acquired or any facility developed/restored pursuant to this Agreement to uses other than those purposes for which assistance was originally approved, without the approval of IAC-SRFB or the Director, in compliance with applicable statutes, rules, and IAC-SRFB policies as identified in this Agreement. It is the intent of IAC-SRFB conversion policy that all lands acquired and all lands developed/ restored with funding assistance from IAC-SRFB remain in the public domain in perpetuity unless otherwise identified in the Agreement.

By IAC-SRFB policy and federal law a conversion may occur under any of the following circumstances:

Conveyance. Property interests are conveyed for non-public outdoor recreation, habitat conservation, or salmon recovery uses;

Use. Non-outdoor recreation, habitat conservation, or salmon recovery uses (public or private) are made of the Project area, or portion thereof (above or below ground);

Development/Restoration. Non-eligible indoor facilities are developed within the Project area without prior approval of IAC-SRFB or the Director; or

Termination of Use/Conformance.

- ▶ Outdoor Recreation Projects - Public use of the property acquired or developed/restored with IAC assistance is terminated.
- ▶ Habitat Conservation and Salmon Recovery Projects - The property acquired no longer meets or conforms to the intent of the category in which it was funded.

Element Change. A major change occurs in an element described in the Agreement. However, when approved by IAC-SRFB or the Director, an element may be deleted from the Project Agreement without triggering the replacement requirement. Under this requirement, the Sponsor must replace changed elements with similar elements. The replacement need not occur when the changed elements are not needed or cannot be retained for public use due to one or more the following conditions:

- ▶ Obsolescence
- ▶ Extraordinary Vandalism
- ▶ Acts of Nature
- ▶ Designed life expectancy reached
- ▶ Fire
- ▶ Property or property rights lost as a result of legal action
- ▶ ICC National Trails System Act reversion order (*National Trails System Act 8(d), 16 U.S.C. § 1247(d); WAC 286-27-060(2)*).

**19.
Acquisition
Projects -
Converted**

Before approval of a conversion request for any properties acquired with IAC-SRFB assistance, IAC-SRFB must be provided with sufficient information to determine that:

1. All practical alternatives to the conversion have been evaluated and rejected on sound basis.
2. The fair market value of the land to be converted has been established and that the land proposed for substitution is of at least equal current fair market value. The market value must be established by appraisal as provided in Manual #3.

Property improvements will be excluded from all fair market value consideration for land to be substituted. Exceptions may be considered only in those cases where land proposed for substitution contains improvements which directly enhance its outdoor recreation or habitat conservation utility.

3. The land proposed for replacement is of reasonably equivalent recreation or habitat utility and location to that being converted. Depending upon the situation, the replacement land need not provide identical recreation experiences or habitat values or be located at the same site provided it is in a reasonably equivalent location. *It must, however, be administered by the same political jurisdiction as the converted land and be identifiable in the agency's Comprehensive Park and Recreation or Habitat Conservation Plan.*
4. The land proposed for substitution meets the eligibility requirement for acquisition projects. The replacement land must stand on its own merits as or be part of, a viable recreation or habitat area. Land which is already publicly owned may not be used for substitution unless it meets IAC-SRFB acquisition criteria. (Manual #3)

For lands acquired with federal LWCF assistance, in addition to items 1-4, above, provide:

1. An Environmental Impact Assessment.
2. Evidence of an appropriate review process. If the proposed conversion and substitution are significant, this includes a notice of intent that contains –
 - ▶ A detailed description of the proposal
 - ▶ An address where comments may be forwarded, and
 - ▶ The deadline for comment.

At least 30 days before the end of the comment period, the notice must be mailed to the State Historic Preservation Officer (SHPO) and any affected state, area, and regional agencies.

3. Copies of all SHPO comments, even if "no comment" is indicated.

The development/restoration of facilities may not be substituted for any part of a land acquisition conversion.

**20. Development/
Restoration
Projects -
Converted**

A conversion of use occurs when the use of a property or facility developed/restored with IAC-SRFB and/or federal fund assistance is changed from the use(s) for which state assistance was originally approved, *without* prior IAC or Office approval. Partial or total redevelopment/restoration of the same site at the sponsor's expense is included under this definition.

The following policies apply to all development/restoration conversions:

1. All practical alternatives to the conversion must be evaluated and rejected on a sound basis.
2. The development/restoration proposed for replacement must be of reasonably equivalent recreation or habitat conservation (as appropriate) utility and location as that proposed for conversion, even though the function(s) provided may not be identical. It must also be administered by the same political jurisdiction as the converted development/restoration and satisfy recreation or habitat conservation (as appropriate) need(s) identifiable in the agency's Comprehensive Park and Recreation or Habitat Conservation (as appropriate) Plan.
3. Other recreation or habitat conservation facilities already developed/restored may not be considered for replacement.
4. All elements included in the replacement of converted developed/restored facilities must be eligible under IAC development/restoration project criteria.

In addition to compliance with policies 1-4, above, facilities developed/restored with federal LWCF assistance must provide:

1. An Environmental Impact Assessment.
2. Evidence of an appropriate review process. If the proposed conversion and substitution are significant, this includes a notice of intent that contains –
 - ▶ A detailed description of the proposal
 - ▶ An address where comments may be forwarded, and
 - ▶ The deadline for comment.

At least 30 days before the end of the comment period, the notice must be mailed to the State Historic Preservation Officer (SHPO) and any affected state, area, and regional agencies.

3. Copies of all SHPO comments, even if "no comment" is indicated.

**21. Combination
Projects -
Converted**

The policies in subsections 19 and 20, above, apply to conversion of sites where IAC-SRFB has assisted in both acquisition and development/restoration.

**22.
Conversion
Approval**

The Director may approve the following conversion requests:

- 1a. The conversion of use impacts less than ten percent of the original project scope
or
- 1b. The conversion of use is less than ten percent of the total project cost within the original project agreement;
and
2. The total cost of the conversion of use is less than \$25,000.

All other conversion requests must be approved by IAC-SRFB.

**23.
Conversion
Process**

As soon as the sponsor or the Office determines a project change may constitute a conversion, the sponsor shall contact the Office to begin resolution of the conversion. The steps to take are listed below.

1. Contact the Office to determine the type of conversion and funded project(s) impacted. Staff will determine if the conversion requires Director or IAC-SRFB approval. Specific timelines may be set to meet appropriate deadlines when Board approval is required.
2. Prepare a written request for IAC-SRFB approval of the project change. Include as required:
 - ▶ Alternatives considered
 - ▶ Justification that supports the replacement site as reasonably equivalent recreation or habitat utility and location.
 - ▶ Appraisal and appraisal review of the proposed conversion (acquisition projects)
 - ▶ Appraisal and appraisal review of the proposed replacement (acquisition projects)
 - ▶ A site plan that clearly indicates the development/restoration proposed for conversion (acquisition and development/restoration).
 - ▶ A site plan that shows the development/restoration proposed for replacement (acquisition and development/restoration).
 - ▶ Maps, plans, graphics, and other documents as requested by the Office.
3. If LWCF assistance was used, also include the additional items referenced in Sections 23 – *Provisions Applying to Acquisition Projects*, or 22 – *Provisions Applying to Development/ Restoration Projects*.

Once all documents are received and reviewed for compliance with applicable rules, statutes, and policies, the Office will conduct a site review to physically assess the conversion and proposed replacement site and/or facilities.

When all conditions are met, the Director will either approve, deny, or refer the request to the IAC-SRFB for action. After approval by the Director or the IAC, if LWCF funds are involved, the request will be forwarded to NPS for review and final approval.

When final approval is granted by the Director or the IAC-SRFB, the Office will amend the appropriate Project Agreement(s) to reflect the change. This approval will only be granted upon satisfaction of the terms of the approved conversion.

SECTION 4 – PROJECT AGREEMENT

The following composite sample summarizes IAC-SRFB Project Agreements, including:

- Boating Facilities
- Boating Infrastructure Grant Program
- Firearms and Archery Range Recreation
- Hatchery Reform Program
- Land & Water Conservation Fund
- National Recreational Trails
- Nonhighway & Off-Road Vehicle Activities
- Salmon Recovery Program
- Washington Wildlife & Recreation
- Youth Athletic Facilities

The first part, Sample Project Agreement, describes the purpose, implementation period, rights and obligations, and other basic provisions of the agreement.

The second part, provides samples of the other documents considered a part of the Project Agreement. These include:

- A Sample Project Summary,
- Sample Milestone for a Combination Project, and an
- Eligible Reimbursement Activities Report.

The third part, General Provisions, describes each basic contract element applicable to an IAC-SRFB grant.

NOTES:



Sample Project Agreement

[ACCOUNT NAME]

Project Sponsor _____ Project Number _____
Project Title _____ IAC Approval Date _____

A. **PARTIES OF THE AGREEMENT**

This Project Grant Agreement (Agreement) is entered into between the [Salmon Recovery Funding Board (SRFB) or Interagency Committee for Outdoor Recreation (IAC)], P.O. Box 40917, Olympia, Washington 98504-0917 and [Organization Name, Address, City, State, Zip Code] (Sponsor) and shall be binding upon the agents and all persons acting by or through the parties.

B. **PURPOSE OF AGREEMENT**

This Agreement sets out the terms and conditions by which a grant is made from the [Account Name] of the State of Washington's General Fund. The grant is administered by the IAC-SRFB to the Sponsor for the project named above.

C. **DESCRIPTION OF PROJECT**

The subject Project is described on the attached Project Summary.

D. **TERM OF AGREEMENT**

The Project Sponsor's on-going obligation for the project shall be the same as the Period of Performance period identified in Section E.

E. **PERIOD OF PERFORMANCE**

The Project reimbursement period shall begin on _____ and end on _____. No expenditure made before or after this period is eligible for reimbursement unless incorporated by written amendment into this Agreement.

F. **PROJECT FUNDING**

The total grant award provided by the IAC-SRFB for this project shall not exceed _____. The IAC-SRFB shall not pay any amount beyond that approved for funding of the project. The Sponsor shall be responsible for all total project costs that exceed this amount. The contribution by the Sponsor toward work on this project at a minimum shall be as indicated below:

	Percentage	Dollar Amount
IAC-SRFB-[account - category]	_____	_____
Project Sponsor	_____	_____
Total Project Cost	100	_____

G. **RIGHTS AND OBLIGATIONS**

All rights and obligations of the parties to this Agreement are subject to this Agreement and its attachments, including the Sponsor's application, Project Summary, Eligible Reimbursement Activities Report, Project Milestones, and the General Provisions, all of which are attached hereto and incorporated herein.

Except as provided herein, no alteration of any of the terms or conditions of this Agreement will be effective unless provided in writing. All such alterations except those concerning the period of

performance, must be signed by both parties. Period of performance extensions need only be signed by IAC's Director.

The Sponsor has read, fully understands and agrees to be bound by all terms and conditions as set forth in these documents.

H. COMPLIANCE WITH APPLICABLE STATUTES, RULES, AND IAC-SRFB POLICIES

This Agreement is governed by, and the Sponsor shall comply with, all applicable state and federal laws and regulations, including Chapter [REVISED CODE OF WASHINGTON SECTION(S)] RCW, Chapter 286 WAC, and published agency policies, which are incorporated herein by this reference as if fully set forth.

I. ADDITIONAL PROVISIONS OR MODIFICATIONS OF THE GENERAL PROVISIONS

J. FEDERAL FUND INFORMATION

A portion or all of the funds for this project are provided through a federal funding source. Funds provided from the US Dept. of Commerce must be reported under CFDA #11.438 – Salmon Restoration and Award Number NA06FP0201 for federal fiscal year 2001.

As a sub-recipient of the federal funds, you are required to provide SRFB with a summary of the federal expenditures by CFDA # for each year. If your total federal expenditures are \$300,000 or more in a one-year period, you are required to have a federal single audit in compliance with OMB Circular A-133.

K. PROJECT GRANT AGREEMENT REPRESENTATIVE

All written communications sent to the Sponsor under this Agreement will be addressed and delivered to:

Project Contact

Name:

Title:

Address:

IAC/SRFB

Interagency Committee for Outdoor Recreation

Natural Resources Building

PO Box 40917

Olympia, Washington 98504-0917

These addresses shall be effective until receipt by one party from the other of a written notice of any change.

L. ENTIRE AGREEMENT

This agreement, along with all attachments, constitute the entire agreement of the parties. NO other understandings, oral or otherwise, regarding this Agreement shall exist or bind any of the parties.

M. EFFECTIVE DATE

This agreement, for project [Number], shall be effective upon signing by all parties.

State of Washington

Interagency Committee for Outdoor Recreation

[ON BEHALF OF SALMON RECOVERY FUNDING BOARD]

By: _____
[DIRECTOR]

Date: _____

Project Sponsor

By: _____

Date: _____

Title: _____

Pre-approved as to form:

BY: _____/s/

Assistant Attorney General



IAC-SRFB Program Category Post-Evaluation Project Summary

TITLE: Sample Project			NUMBER: 00-0000C (Combined)
			STATUS: Board Funded
SPONSOR: Funded Organization			EVALUATION SCORE: 45.75
			BOARD RANKING: 3 of 11
COSTS:			SPONSOR MATCH:
IAC - WWRP - UW	\$500,000.00	50%	Appropriations / Cash Donated Land
Sponsor Share	<u>\$500,000.00</u>	<u>50%</u>	
Total	\$1,000,000.00	100%	

DESCRIPTION:

The acquisition and development of New Habitat Area is a unique opportunity for an urban community. In eastern Washington, few large wetlands remain in urban areas. The historical use of Habitat as a migratory waterfowl area makes the preservation of this area even more important. Thousands of birds depend on this area for food and refuge every year. More than fourteen species show up every year, including the very showy Tundra and Trumpeter swans. Migratory shorebirds visit the area alongside the waterfowl. Mink, muskrat and beaver are present. Many predators can be observed, including an unusually high number of raptors such as bald and golden eagle, and peregrine and prairie falcon. Coyotes, bobcats, and cougar frequently hunt in the area.

This proposal is for acquisition of 590 acres of a southern pristine marshy area, a northern area with large vernal lakes, small year-around ponds, and a central area that has second growth deciduous forest. Upon completion of the acquisition, plans are to develop the site with plantings to assist with restoration of the habitat. Development will also include trails, interpretive signs, and fencing

LOCATION INFORMATION:

Fifteen miles southeast of East Side Town.

COUNTY: Any County

SCOPE (ELEMENTS):

Administrative costs	Parking	Signing
Allowable land costs	Permits	Site Preparation
Architectural & Engineering	Riparian	Trails
Fencing & Gates	Sales Tax	Upland
Incidentals	Shelters	

ANTICIPATED ACREAGE:

<u>ACREAGE TYPE</u>	<u>Acres To Be Acquired</u>	<u>Acres To Be Developed</u>	<u>Acres To Be Renovated</u>
Lake	46.00	6.50	
Uplands	271.00		
Wetlands	273.00		

FISCAL YEAR: 2002

DATE PRINTED: July 29, 2001



Legal Description

Project Sponsor: Dept. of Natural Resources
Project Title: North Bay NAP

Project Number: 00-1427 A
IAC Approval: 07/18/2001

Legal Description

[SAMPLE #1: IF THE LEGAL DESCRIPTION OF THE PROPERTY TO BE ACQUIRED IS KNOWN EARLY IN THE APPLICATION PROCESS, THE DESCRIPTION (AN EXAMPLE OF WHICH FOLLOWS) WILL BE INCLUDED IN THE PROJECT AGREEMENT.]

The NW ¼ of the NE ¼, Less County Road in Section 31, Township 26N, Range 6E, W.M., Sample County Washington; also known as Tax Lot 2 in said section.

[SAMPLE #2: IF THE LEGAL DESCRIPTION IS UNKNOWN, THE FOLLOWING PARAGRAPH WILL BE INCLUDED IN THE PROJECT AGREEMENT.]

The legal description of the property purchased with funding assistance provided through this Project Agreement (and protected by a recorded Deed-of-Right) shall be amended into the Project Agreement before reimbursement of the final payment.



Eligible Reimbursement Activities Report

Project Sponsor: Funded Organization
Project Title: Sample Project

Project Number: 00-0000 C
IAC Approval: mm/dd/yyyy

Acquisition Project: Items

Administrative costs
Applicable taxes
Appraisal and review
Closing
Fencing
Hazardous substances assess
Land
Noxious weed control
Recording fees
Signing
Survey
Title reports/insurance

Development Project:

Element	Item	Unit	Quantity	Description
Architectural & Engineering	A & E development	Lump Sum	1.00	
Fencing & Gates	Barrier rocks	Lump sum	1.00	
Fencing & Gates	Fencing & gates - other	Lump sum	1.00	Wide Flange Post and 4" pipe rails
Fencing & Gates	Fencing - wire	Linear Ft	29.00	4 smooth
Fencing & Gates	Gates	Each	2.00	Lockable Pipe Types
Parking	Parking - gravel	Spaces	20.00	2 accessible
Permits	Permits	Lump sum	1.00	
Riparian	Livestock fencing	Linear Ft	5,300.00	
Sales Tax	Sales Tax	Lump Sum	1.00	
Shelters	Kiosk	Each	2.00	100 sq feet each x 2
Signing	Boundary signs	Each	34.00	
Signing	Interpretive signs	Each	2.00	Routed Wood
Signing	Kiosk signs	Lump sum	2.00	
Signing	Traffic/directional signs	Lump sum	1.00	
Signing	Trail signs	Each	10.00	
Signing	Trailhead/bulletin board signs	Lump sum	2.00	
Site Preparation	Clearing	Acres	1.90	
Site Preparation	Grading	Acres	1.90	
Site Preparation	Grubbing	Acres	1.90	Parking Area
Site Preparation	Mobilization	Lump sum	1.00	
Trails	Trails - gravel	Linear Ft	5,500.00	4' wide x 3" deep
Upland	Nest boxes	Each	50.00	



Milestone Report By Project

Project Number: 00-0000 C
Project Name: Sample Project
Sponsor: Funded Organization
IAC-SRFB Project Manager: Project Manger Name

X	!	Milestone	Target Date	Comments/Description
		Project Start	08/01/2005	
X	!	Order Appraisal/Review	05/01/2005	Pre-Agreement
X	!	Purchase Agreement Signed	07/01/2005	Pre-Agreement
X		Environmental Assess Complete	06/15/2005	Pre-Agreement
X		Survey Complete	06/21/2005	Pre-Agreement
	!	Acquisition Closing	09/01/2005	
		Recorded Documents to IAC	10/01/2005	
		Fencing Complete	11/01/2005	
		Noxious Weed Control Complete	10/15/2005	
		Demolition Complete	09/30/2005	
	!	RFP Complete/Consultant Hired	09/01/2005	
	!	A&E Complete/Permits Submitted	12/01/2005	
		Plans & Specs Reviewed by IAC	02/31/0005	
		Bid Awarded	03/30/2006	
	!	Construction Started	05/01/2008	
		Annual Project Billing	06/15/2008	
	!	Special Conditions Met	07/01/2008	
	!	Project Complete	12/31/2008	
		Final Docs & Billing to IAC	02/28/2009	

X = Milestone Complete
! = Critical Milestone



Milestone Status Tracking Sheet

Project Number: 00-0000C
Project Name: Sample Project
Sponsor: Funded Organization
Project Manager: IAC-SRFB Manager Name

X	!	Milestone	Target Date	Comments/Description
x		Project Start		
	!	Order Appraisal/Review		
	!	Purchase Agreement Signed		
		Environmental Assess Complete		
		Survey Complete		
	!	Acquisition Closing		
		Recorded Documents to IAC		
		Fencing Complete		
	!	RFP Complete/Consultant Hired		
	!	A&E Complete/Permits Submitted		
		Plans & Specs Reviewed by IAC		
		Bid Awarded		
	!	Construction Started		
		Annual Project Billing		
	!	Project Complete		
		Final Docs & Billing to IAC		

Project Status (include major work progress to date, steps currently taking toward project completion, and timeline for remaining work):

Are there known circumstances that could affect the sponsors ability to maintain the timeline above.

If yes, please explain.



General Provisions

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SECTION 1. HEADINGS AND DEFINITIONS

- A. Headings used in this Agreement are for reference purposes only and shall not be considered a substantive part of this Agreement.
- B. Definitions. As used throughout this Agreement, the following terms shall have the meaning set forth below:

Acquisition - The gaining of rights of public ownership by purchase, negotiation, or other means, of fee or less than fee interests in real property.

Agreement - The accord accepted by all parties to the present transaction; the Agreement, supplemental agreement, intergovernmental agreement, monitoring plan, and/or a landowner agreement between the Funding Board and a Sponsor.

Applicant - Any agency or organization that meets the qualifying standards, including deadlines, for submission of an application soliciting a grant of funds from the Funding Board.

Application - The forms and support documents approved by the Funding Board or its Director for use by applicants in soliciting project funds administered by the Office.

Asset – Equipment purchased by the Sponsor or acquired or transferred to the Sponsor for the purpose of this Agreement. This definition is restricted to non-fixed assets, such as vehicles, computers or machinery.

Contractor - shall mean one not in the employment of the Sponsor who is performing all or part of the eligible activities for this projects under a separate Agreement with the Sponsor. The term "Contractor" and "Contractors" means Contractor(s) in any tier.

Development/Restoration - The construction, renovation, redevelopment, or installation of facilities to provide for outdoor recreation or natural resources.

Director - The Office Director or the Director's designee.

Funding Board – As identified in Paragraph A in the Agreement as either the (1) Interagency Committee for Outdoor Recreation (IAC) - The committee created under Chapter 79A.25.110 RCW includes eight members. Three are agency heads: the Commissioner of Public Lands, the Director of Parks and Recreation, and the Director of Fish and Wildlife (or their designees). Five, by appointment of the Governor with the advice and consent of the Senate, are members of the public at large who have demonstrated interest in and a general knowledge of outdoor recreation in the state; (2) Salmon Recovery Funding Board (SRFB) - The Board created under Chapter 77.85.110 RCW, is comprised of five governor-appointed voting members (one a cabinet-level appointment) and five non-voting state officials: the Commissioner of Public Lands, the Secretary of Transportation, the Director of the Conservation Commission, the Director of Fish and Wildlife, and the Director of Ecology (or their designees); or (3) Hatchery Scientific Review Group (HSRG) – The independent Board established by Congress to ensure hatchery reform programs in Puget Sound and Coastal Washington are scientifically founded and evaluated.

Office - Office of the Interagency Committee - The Office provides support to the IAC, SRFB, and HSRG. The Office includes the Director and personnel, created by Chapters 79A.25.110 and 79A.25.150 RCW and charged with administering this Agreement by Chapters 77.85.110 and 79A.25.240 RCW.

Landowner Agreement – A landowner agreement is required between a Sponsor and landowner for projects located on land not owned, or otherwise controlled, by the Sponsor for salmon recovery projects.

Milestone – Important date(s) tracked in the Agreement for monitoring the Project status.

Period of Performance - The time period specified in the Agreement, under Section E, Period of Performance.

Post Evaluation Summary - One of the documents used to summarize and describe the actions untaken in the Agreement.

Project - The undertaking that is the subject of this Agreement and that is, or may be, funded in whole or in part with funds administered by the Office on behalf of the Funding Board.

Sponsor - The applicant who has been awarded a grant of funds and is bound by this executed Agreement; includes its officers, employees and agents.

SECTION 2. PERFORMANCE BY THE SPONSOR

The Sponsor shall undertake the Project as described in this Agreement, Post Evaluation Summary, the Sponsor's application, and in accordance with the Sponsor's proposed goals and objectives described in the application or documents submitted with the application, all as finally approved by the Funding Board. All submitted documents are incorporated by this reference as if fully set forth herein. The Order of Precedence is covered in Section 26.

Timely completion of the Project is important. Failure to do so, as set out in this Agreement, is a material breach of the Agreement.

SECTION 3. ASSIGNMENT

Neither this Agreement, nor any claim arising under this Agreement, shall be transferred or assigned by the Sponsor without prior written consent of the Funding Board.

SECTION 4. RESPONSIBILITY FOR PROJECT

While the Funding Board undertakes to assist the Sponsor with the Project by providing a grant pursuant to this Agreement, the Project itself remains the sole responsibility of the Sponsor. The Funding Board undertakes no responsibilities to the Sponsor, or to any third party, other than as is expressly set out in this Agreement. The responsibility for the implementation of the Project, as those phases are applicable to this Project, is solely that of the Sponsor, as is responsibility for any claim or suit of any nature by any third party related in any way to the Project.

SECTION 5. INDEMNIFICATION

To the fullest extent permitted by the law, the Sponsor expressly agrees to and shall indemnify, defend and hold harmless the State and its agencies, officials, agents and employees from and against all claims, actions, costs, damages, or expenses of any nature arising out of or incident to the Sponsor's or any Contractor's performance or failure to perform the Agreement. Sponsor's obligation to indemnify, defend and hold harmless also includes any claim by Sponsor's agents, employees, representatives or any Contractor or its employees. Sponsor's obligation to defend includes payment of any costs or attorneys' fees. Sponsor's obligation shall not include such claims that may be caused by the sole negligence of the State and its agencies, officials, agents, and employees. If the claims or damages are caused by or result from the concurrent negligence of (a) the State, its agents or employees and (b) the Sponsor, its Contractors, agents, or employees, this indemnity provision shall be valid and enforceable only to the extent of the negligence of the Sponsor or its Contractors, agents, or employees. The Sponsor expressly agrees to waive his/her immunity under Title 51 RCW to the extent required to indemnify, defend, and hold harmless the State and its agencies, officials, agents or employees.

SECTION 6. INDEPENDENT CAPACITY OF THE SPONSOR

The Sponsor and its employees or agents performing under this Agreement are not employees or agents of the Funding Board or the Office. The Sponsor will not hold itself out as nor claim to be an officer or employee of the Office or of the state of Washington by reason hereof, nor will the Sponsor make any claim of right, privilege or benefit which would accrue to an employee under Chapters 41.06 or 28B.16 RCW.

The Sponsor is responsible for withholding and/or paying employment taxes, insurance, or deductions of any kind required by federal, state, and/or local laws.

SECTION 7. CONFLICT OF INTEREST

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the Office may, in its sole discretion, by written notice to the Sponsor terminate this Agreement if it is found after due notice and examination by the Office that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Sponsor in the procurement of, or performance under this Agreement. In the event this Agreement is terminated as provided above, the Office shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of the Office provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Office makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes Hearing" clause of this Agreement.

In the event this Agreement is terminated as provided above, the Funding Board or the Office shall be entitled to pursue the same remedies against the Sponsor as it could pursue in the event of a breach of the Agreement by the Sponsor. The rights and remedies of the Funding Board or the Office provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law. The existence of facts upon which the Funding Board or the Office makes any determination under this clause may be reviewed as provided in the "Disputes" clause of this Agreement.

SECTION 8. ACKNOWLEDGMENT AND SIGNS

- A. Publications. The Sponsor shall include language which acknowledges the funding contribution of the program to this Project in any release or other publication developed or modified for, or referring to, the Project.
- B. Signs. The Sponsor also shall post signs or other appropriate media at Project entrances and other locations on the Project which acknowledge the program's funding contribution, unless exempted in Funding Board policy or waived by the Director.
- C. Ceremonies. The Sponsor shall notify the Office no later than two weeks before a dedication ceremony for this Project. The Sponsor shall verbally acknowledge the program's funding contribution at all dedication ceremonies.
- D. Federally Funded Projects. When issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing a project funded in whole or in part with federal money provided for in this grant, Sponsors shall clearly state:
 - 1. The percentage of the total costs of the Project that is financed with federal money;
 - 2. The dollar amount of federal funds for the Project; and
 - 3. The percentage and dollar amount of the total costs of the Project that is financed by nongovernmental sources.

SECTION 9. COMPLIANCE WITH APPLICABLE LAW

The Sponsor will implement the Agreement in accordance with applicable federal, state, and local laws and regulations.

The Sponsor shall comply with, and the Office is not responsible for determining compliance with, any and all applicable federal, state, and local laws, regulations, and/or policies, including, but not limited to, State Environmental Policy Act; Industrial Insurance Coverage; Architectural Barriers Act; permits (shoreline, Hydraulics Project Approval, demolition); land use regulations (comprehensive areas

ordinances, Growth Management Act); federal and state safety and health regulations (Occupational Safety and Health Administration/Washington Industrial Safety and Health Act); and Buy American Act.

The Sponsor shall comply with all applicable federal, state, and local nondiscrimination laws and/or policies, including but not limited to, the Americans with Disabilities Act; Civil Rights Act; and the Age Discrimination Act. In the event of the Sponsor's noncompliance or refusal to comply with any nondiscrimination law or policy, the Agreement may be rescinded, cancelled, or terminated in whole or in part, and the Sponsor may be declared ineligible for further grant awards from the Funding Board. The Sponsor is responsible for any and all costs or liability arising from the Sponsor's failure to so comply with applicable law.

No part of any funds provided under this grant shall be used, other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, or for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support or defeat legislation pending before the U.S. Congress or any state legislature.

No part of any funds provided under this grant shall be used to pay the salary or expenses of any Sponsor, or agent acting for such Sponsor, related to any activity designed to influence legislation or appropriations pending before the U.S. Congress or any state legislature.

For habitat restoration projects funded in part or whole with National Marine Fisheries Service funding, Sponsor shall not commence with clearing of riparian trees or in-water work unless and until an ESA consultation is completed and delivered by National Marine Fisheries Service to the Sponsor. Violation of this paragraph shall not be the basis for any enforcement responsibility by the IAC.

SECTION 10. RECORDS MAINTENANCE

The Sponsor shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Sponsor shall retain such records for a period of six years following the date of final payment. At no additional cost, these records, including materials generated under the Agreement, shall be subject at all reasonable times to inspection, review or audit by the Office, personnel duly authorized by the Office, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.

If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

SECTION 11. ACCESS TO DATA

In compliance with chapter 39.29 RCW, the Sponsor shall provide access to data generated under this Agreement to the Office, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Sponsor's reports, including computer models and methodology for those models.

SECTION 12. TREATMENT OF ASSETS

- A. Assets shall remain in the possession of the Sponsor for the duration of the project or program. When the Sponsor discontinues use of the asset(s) for the purpose for which it was funded, the Office will require the Sponsor deliver the asset(s) to the Office, dispose of the asset according to agency policies, or return the fair market value of the asset(s) to the Office. Assets shall be used only for the purpose of this Agreement, unless otherwise provided herein or approved by the Office in writing.
- B. The Sponsor shall be responsible for any loss or damage to assets which results from the negligence of the Sponsor or which results from the failure on the part of the Sponsor to maintain and administer that property in accordance with sound management practices.

SECTION 13. RIGHT OF INSPECTION

The Sponsor shall provide right of access to its facilities to the Office, or any of its officers, or to any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this Agreement.

If a Landowner Agreement has been executed, it may further stipulate and define the Funding Board and the Office's right to inspect and access lands acquired or developed with Funding Board assistance.

SECTION 14. STEWARDSHIP AND MONITORING

Sponsor agrees to perform monitoring and stewardship functions as stated in the monitoring and stewardship plans as approved by the Funding Board or the Office. Sponsor further agrees to utilize, where applicable and financially feasible, any monitoring protocols recommended by the Funding Board.

SECTION 15. DEBARMENT CERTIFICATION

The Sponsor certifies it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any Federal department or agency. If requested by the Office, the Sponsor shall complete a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Sponsor for this Agreement shall be incorporated into this Agreement by reference.

SECTION 16. PROJECT FUNDING

- A. Additional Amounts. The Funding Board shall not be obligated to pay any amount beyond the dollar amount as identified in this Agreement, unless an additional amount has been approved in advance by the Funding Board or Director and incorporated by written amendment into this Agreement.
- B. Before the Agreement. No expenditure made, or obligation incurred, by the Sponsor before the effective date of this Agreement shall be eligible for grant funds, in whole or in part, unless specifically provided for by Funding Board policy. The dollar amounts identified in this Agreement may be reduced as necessary to exclude any such expenditure from reimbursement.
- C. After the Period of Performance. No expenditure made, or obligation incurred, following the period of performance shall be eligible, in whole or in part, for grant funds hereunder. In addition to any remedy the Funding Board may have under this Agreement, the amounts identified in this Agreement shall be reduced to exclude any such expenditure from participation.

SECTION 17. PROJECT REIMBURSEMENTS

- A. Compliance and Payment. The obligation of the Office to pay any amount(s) under this Agreement is expressly conditioned upon strict compliance with the terms of this Agreement by the Sponsor.
- B. Compliance and Retainage. The Office reserves the right to withhold disbursement of the final ten percent (10%) of the total amount of the grant to the Sponsor until the Project has been completed and approved by the Director. A Project is considered "complete" when:
 - 1. all approved or required activities outlined in the Agreement are complete;
 - 2. on-site signs are in place (if applicable);
 - 3. a final Project report is submitted to the Office with the Sponsor's final request for reimbursement;
 - 4. the completed Project has been approved by the Office;
 - 5. final amendments have been processed; and
 - 6. fiscal transactions are complete.
- C. Invoice Frequency. Invoices are required at least once a quarter from state agency sponsors and at least once a year from all other sponsors. The year-end invoice should include expenditures through June 30, the last day of the State's fiscal year and be submitted no later than July 15th. Final reimbursement requests should be submitted to the Office within ninety (90) days of the completion of the Project, funding end date, or the termination date, whichever comes first.

SECTION 18. ADVANCE PAYMENTS

Advance payments of or in anticipation of goods or services to be provided under this Agreement are limited to salmon grants and must comply with SRFB policy.

SECTION 19. NON-AVAILABILITY OF FUNDS

If amounts sufficient to fund the grant made under this Agreement are not appropriated by the Washington State Legislature, or if such funds are not allocated by the Washington State Office of Financial Management (OFM) to the Office for expenditure for this Agreement in any biennial fiscal period, the Office shall not be obligated to pay any remaining unpaid portion of this grant unless and until the necessary action by the Legislature or OFM occurs. If the Office participation is suspended under this section for a continuous period of one year, the Office's obligation to provide any future funding under this Agreement shall terminate. Termination of the Agreement under this section is not subject to appeal by the Sponsor.

SECTION 20. RECOVERY OF PAYMENTS

In the event that the Sponsor fails to expend funds under this Agreement in accordance with state and federal laws, and/or the provisions of the Agreement, the Office reserves the right to recover grant award funds in the amount equivalent to the extent of noncompliance in addition to any other remedies available at law or in equity.

The Sponsor shall reimburse the Office for any overpayment or erroneous payments made under the Agreement. Repayment by the Sponsor of such funds under this recovery provision shall occur within 30 days of demand by the Office. Interest shall accrue at the rate of twelve percent (12%) per annum from the time that payment becomes due and owing.

SECTION 21. COVENANT AGAINST CONTINGENT FEES

The Sponsor warrants that no person or selling agent has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Sponsor for the purpose of securing business. The Office shall have the right, in the event of breach of this clause by the Sponsor, to annul this Agreement without liability or, in its discretion, to deduct from the Agreement price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

SECTION 22. PROVISIONS APPLYING TO DEVELOPMENT/RESTORATION PROJECTS

The following provisions shall be in force only if the Project described in this Agreement is for development/restoration of land or facilities for outdoor recreation, habitat conservation, or salmon recovery:

- A. Construction Document Review and Approval. The Sponsor agrees to submit one copy of all construction plans and specifications to the Office for review. Review and approval by the Office will be for compliance with the terms of this Agreement.
- B. Contracts for Construction. Sponsor shall award all contracts for construction using whatever method is appropriate and legal for the Sponsor.
- C. Construction Contract Change Order. Only change orders that significantly reduce or change the scope of the Project as described to and approved by the Funding Board or the Office must receive prior written approval.
- D. Control and Tenure. Appropriate control and tenure of the land proposed for use must be executed and documented.
- E. Nondiscrimination. Except where a nondiscrimination clause required by a federal funding agency is used, the Sponsor shall insert the following nondiscrimination clause in each contract for construction of this Project:

"During the performance of this contract, the Sponsor agrees to comply with all federal and state nondiscrimination laws, regulations and policies."

SECTION 23. PROVISIONS APPLYING TO ACQUISITION PROJECTS

The following provisions shall be in force only if the Project described in this Agreement is for the acquisition of interest in real property for outdoor recreation, habitat conservation, or salmon recovery purposes:

- A. Evidence of Land Value. Before disbursement of funds by the Office as provided under this Agreement, the Sponsor agrees to supply evidence to the Office that the land acquisition cost has been established per Funding Board policy.
- B. Evidence of Title. The Sponsor agrees to show the type of ownership interest for the property that has been acquired. This shall be done before any payment of financial assistance.
- C. Deed of Right to Use Land for Public Purposes. The Sponsor agrees to execute an instrument or instruments which contain:
 - 1. The legal description of the property acquired under this Agreement;
 - 2. A conveyance to the State of Washington of the right to use the described real property forever for the purpose identified in the Agreement; and
 - 3. A requirement to comply with applicable statutes, rules, and the Funding Board policies with respect to conversion of use.
- D. Assignment of Rights. When acquiring a conservation easement, the Sponsor agrees to execute an instrument or instruments that contain:
 - 1. The legal description of the conservation easement acquired under this Agreement;
 - 2. An assignment to the State of certain rights for access to and stewardship of the property covered by the conservation easement;
 - 3. Acknowledgement of the right of the Funding Board and the Office for enforcement of the provisions of the conservation easement; and
 - 4. A statement that the Sponsor will retain all responsibility for obligations under the terms of the conservation easement.
- E. Real Property Acquisition and Relocation Assistance
 - 1. When federal funds are part of this Agreement, the Sponsor agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, 84 Stat. 1894 (1970)--Public Law 91-646, as amended by the Surface Transportation and Uniform Relocation Assistance Act, PL 100-17-1987, and applicable regulations and procedures of the federal agency implementing that Act.
 - 2. When state funds are part of this Agreement, the Sponsor, if required by law, agrees to comply with the terms and conditions of the Uniform Relocation Assistance and Real Property Acquisition Policy of the State of Washington, Chapter 8.26.010 RCW, and Chapter 468-100 WAC.
 - 3. Housing and Relocation. In the event that housing and relocation costs, as required by federal law set out in subsection (1) above and/or state law set out in subsection (2) above, are involved in the execution of this Project, the Sponsor agrees to provide any housing and relocation assistance required.

SECTION 24. HAZARDOUS SUBSTANCES

- A. Definition. "Hazardous substance," as defined in Chapter 70.105D.020 (7) RCW, means:
 - 1. Any dangerous or extremely hazardous waste as defined in Chapter 70.105.010(5) and (6) RCW, or any dangerous or extremely dangerous waste designated by rule pursuant to Chapter 70.105 RCW;
 - 2. Any hazardous substance as defined in Chapter 70.105.010(14) RCW or any hazardous substance as defined by rule pursuant to Chapter 70.105. RCW;
 - 3. Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);
 - 4. Petroleum or petroleum products; and
 - 5. Any substance or category of substances, including solid waste decomposition products, determined by the director [or director's designee of the department of ecology] by rule to present a threat to human health or the environment if released into the environment.

6. The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.
- B. Certification. The Sponsor shall inspect, investigate, and conduct an environmental audit of the proposed acquisition site for the presence of hazardous substances and certify:
 1. No hazardous substances were found on the site, or
 2. Any hazardous substances found have been treated and/or disposed of in compliance with applicable state and federal laws, and the site deemed “clean.”
- C. Responsibility. Nothing in this provision alters the Sponsor's duties and liabilities regarding hazardous substances as set forth in Chapter 70.105D RCW.
- D. Hold Harmless. The Sponsor will defend, protect and hold harmless the Office and any and all of its employees and/or agents, from and against any and all liability, cost (including but not limited to all costs of defense and attorneys' fees) and any and all loss of any nature from any and all claims or suits resulting from the presence of, or the release or threatened release of, hazardous substances on the property being acquired.

SECTION 25. RESTRICTION ON CONVERSION OF FACILITY TO OTHER USES

The Sponsor shall not at any time convert any real property acquired or any facility developed pursuant to this Agreement to uses other than those purposes for which assistance was originally approved, without the approval of the Funding Board or Director, in compliance with applicable statutes, rules, and Funding Board policies as identified in this Agreement. It is the intent of Funding Board's conversion policy that all lands acquired and all lands developed with funding assistance from the Funding Board remain in the public domain in perpetuity unless otherwise identified in the Agreement.

- A. By Funding Board policy a conversion may occur under any of the following circumstances:
 1. Conveyance. Property interests are conveyed for purposes inconsistent with the intent of the Agreement and the funding source.
 2. Use. Non-eligible uses (public or private) are made of the Project area, or portion thereof.
 3. Eligibility. Non-eligible facilities are developed within the Project area without prior approval of the Funding Board or the Office.
 4. Termination of Use/Non-Conformance. The property acquired or project developed no longer meets or conforms to the intent of the Agreement or the funding source.
- B. Element Change. When approved by the Funding Board or Director, certain elements may be deleted from the Agreement without invoking the requirement to replace the elements. Such deletions are allowed when the Funding Board or Director determines that the elements are not needed or cannot be retained due to one or more of the following conditions:
 1. Obsolescence
 2. Extraordinary vandalism
 3. Acts of Nature
 4. Designed life expectancy reached
 5. Fire
 6. Property or property rights lost as a result of legal action
 7. ICC National Trails System Act reversion order (*National Trails System Act 8(d)*, 16 U.S.C. § 1247(d); WAC 286-27-060(2)).

SECTION 26. CONSTRUCTION, OPERATION, USE AND MAINTENANCE OF ASSISTED PROJECTS

Sponsors must ensure that properties or facilities assisted with Funding Board funds, including undeveloped sites, are built, operated, used, and maintained:

- A. According to applicable federal, state, and local laws and regulations, including public health standards and building codes.
- B. In a reasonably safe condition for the project's intended use.

- C. Throughout its estimated life so as to prevent undue deterioration.
- D. In compliance with all federal and state nondiscrimination laws, regulations and policies.

Facilities open to the public must:

- E. Follow all state and federal accessibility guidelines.
- F. Appear attractive and inviting to the public except for brief installation, construction, or maintenance periods.
- G. Be available for use at reasonable hours and times of the year, according to the type of area or facility.

SECTION 27. INCOME AND INCOME USE

- A. Income.
 - 1. Compatible source. The source of any income generated in a Funding Board assisted Project or project area must be compatible with the funding source and the Agreement.
 - 2. Fees. User and/or other fees may be charged in connection with land acquired or facilities developed with Funding Board grants if the fees are consistent with the:
 - (a) Value of any service(s) furnished;
 - (b) Value of any opportunity(ies) furnished; and
 - (c) Prevailing range of public fees in the state for the activity involved.

Excepted are Firearms and Archery Range Recreation Program safety classes (firearm and/or hunter) for which a facility/range fee must not be charged (Chapter 79A.252.210 RCW).
- B. Income use. Regardless of whether income or fees in a Funding Board-assisted area (including entrance, utility corridor permit, cattle grazing, timber harvesting, farming, etc.) are gained during or after the reimbursement period cited in the Agreement, unless precluded by state law, the revenue may only be used to offset:
 - 1. The Sponsor's matching funds; and/or
 - 2. The Project's total cost; and/or
 - 3. The expense of operation, maintenance, stewardship, monitoring, and/or repair of the facility or program assisted by the Funding Board grant; and/or
 - 4. The expense of operation, maintenance, stewardship, monitoring, and/or repair of other similar units in the Sponsor's system; and/or
 - 5. Capital expenses for similar acquisition and/or development.

SECTION 28. PREFERENCES FOR RESIDENTS

Sponsors shall not express a preference for users of grant assisted projects on the basis of residence (including preferential reservation, membership, and/or permit systems) except that reasonable differences in admission and other fees may be maintained on the basis of residence. Even so, the Funding Board discourages the imposition of differential fees. Fees for nonresidents must not exceed twice the fee imposed on residents. Where there is no fee for residents but a fee is charged to nonresidents, the nonresident fee shall not exceed the amount that would be imposed on residents at comparable state or local public facilities.

SECTION 29. PROVISIONS RELATED TO NON-PROFIT OR NOT-FOR-PROFIT SPONSORS

A non-profit or not-for-profit organization sponsor shall:

- A. Maintain a non-profit or not-for-profit status (including registering with the Washington Secretary of State) throughout the Sponsor's obligation to the Project as identified in this Agreement.
- B. Notify the Office prior to dissolution and within 30 days of dissolution the Sponsor shall name a qualified successor that will agree in writing to assume any on-going project responsibilities. A qualified successor is any party eligible to apply for funds in the subject grant program *and* capable of complying with the terms and conditions of this Agreement. The Office will process an amendment transferring the Sponsor's obligation to the qualified successor.

- C. Provide for operation and maintenance of the project. Should the Sponsor fail in this obligation for any reason, the Project will be considered converted or a failed project, and be subject to all remedies available to the Funding Board and the Office.

SECTION 30. LIABILITY INSURANCE REQUIREMENTS FOR FIREARM RANGE SPONSORS

- A. The Sponsor¹ shall procure an endorsement, or other addition, to liability insurance it may currently carry, or shall procure a new policy of liability insurance, in a total coverage amount the Sponsor deems adequate to ensure it will have resources to pay successful claims of persons who may be killed or injured, or suffer damage to property, while present at the range facility to which this grant is related, or by reason of being in the vicinity of that facility; provided that the coverage shall be at least one million dollars (\$1,000,000) for the death of, or injury to, each person.
- B. The liability insurance policy, including any endorsement or addition, shall name Washington State, the Funding Board, and the Office as additional insureds and shall be in a form approved by the Funding Board or Director.
- C. The policy, endorsement or other addition, or a similar liability insurance policy meeting the requirements of this section, shall be kept in force throughout the Sponsor's obligation to the Project as identified in this Agreement.
- D. The policy, as modified by any endorsement or other addition, shall provide that the issuing company shall give written notice to the Office not less than thirty (30) calendar days in advance of any cancellation of the policy by the insurer, and within ten (10) calendar days following any termination of the policy by the Sponsor.
- E. The requirement of Subsection A through D above shall not apply if the Sponsor is a federal, state, or municipal government which has established a program of self-insurance or a policy of self-insurance with respect to claims arising from its facilities or activities generally, including such facilities as firearms or archery ranges, when the applicant declares and describes that program or policy as a part of its application to the Funding Board.
- F. By this requirement, the Funding Board and the Office does not assume any duty to any individual person with respect to death, injury, or damage to property which that person may suffer while present at, or in the vicinity of, the facility to which this grant relates. Any such person, or any other person making claims based upon such death, injury, or damage, must look to the Sponsor, or others, for any and all remedies that may be available by law.

SECTION 31. REQUIREMENTS OF THE NATIONAL PARK SERVICE

If the Project has been approved by the National Park Service, United States Department of the Interior, for assistance from the Federal Land and Water Conservation Fund (LWCF), the Agreement General Provisions in Section 660.3 Attachment B of the *L&WCF Grants-in-Aid Manual* as now existing or hereafter amended are made part of this Agreement, and the Sponsor shall also abide by these Agreement General Provisions. Further, the Sponsor agrees to provide the Office with reports or documents needed to meet the requirements of the Agreement or Section 660.3 Attachment B of the *L&WCF Grants-in-Aid Manual*.

SECTION 32. ORDER OF PRECEDENCE

This Agreement is entered into, pursuant to, and under the authority granted by applicable federal and state laws. The provisions of the Agreement shall be construed to conform to those laws. In the event of an inconsistency in the terms of this Agreement, or between its terms and any applicable statute, rule, or policy or procedure, the inconsistency shall be resolved by giving precedence in the following order:

- A. Applicable federal and/or state statutes, regulations, policies and procedures including applicable federal Office of Management and Budget (OMB) circulars and federal and state executive orders;
- B. Project Agreement including attachments;
- C. Additional Provisions or Modifications of General Provisions;
- D. General Provisions.

¹ As used in this Section, Sponsor refers to Firearms Range Sponsors.

SECTION 33. AMENDMENTS

This Agreement may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

SECTION 34. LIMITATION OF AUTHORITY

Only the Office or Office's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this Agreement is not effective or binding unless made in writing and signed by the Office.

SECTION 35. WAIVER OF DEFAULT

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of the Agreement shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of the Agreement unless stated to be such in writing, signed by the Director, or the Director's designee, and attached to the original Agreement.

SECTION 36. APPLICATION REPRESENTATIONS -- MISREPRESENTATIONS OR INACCURACY OR BREACH

The Funding Board and the Office rely upon the Sponsor's application in making its determinations as to eligibility for, selection for, and scope of, funding grants. Any misrepresentation, error or inaccuracy in any part of the application may be deemed a breach of this Agreement.

SECTION 37. TERMINATION AND OTHER REMEDIES

The Funding Board and the Office may require strict compliance by the Sponsor with the terms of this Agreement including, but not limited to, the requirements of the applicable statutes, rules and Funding Board policies which are incorporated into this Agreement, and with the representations of the Sponsor in its application for a grant as finally approved by the Funding Board.

The Funding Board or the Director, may suspend, or may terminate, the obligation to provide funding to the Sponsor under this Agreement:

- A. In the event of any breach by the Sponsor of any of the Sponsor's obligations under this Agreement; or
- B. If the Sponsor fails to make progress satisfactory to the Funding Board or Director toward completion of the Project by the completion date set out in this Agreement.

In the event this Agreement is terminated by the Funding Board or Director, under this section or any other section after any portion of the grant amount has been paid to the Sponsor under this Agreement, the Funding Board or Director may require that any amount paid be repaid to the Office for redeposit into the account from which the funds were derived.

The Funding Board and the Office may enforce this Agreement by the remedy of specific performance, which usually will mean completion of the Project as described in this Agreement. However, the remedy of specific performance shall not be the sole or exclusive remedy available to the Office. No remedy available to the Funding Board or the Office shall be deemed exclusive. The Funding Board or the Office may elect to exercise any, any combination, or all of the remedies available to it under this Agreement, or under any provision of law, common law, or equity.

SECTION 38. TERMINATION FOR CONVENIENCE

Except as otherwise provided in this Agreement, the Office may, by ten (10) days written notice, beginning on the second day after the mailing, terminate this Agreement, in whole or in part. If this Agreement is so terminated, the Office shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

SECTION 39. DISPUTE HEARING

Except as may otherwise be provided in this Agreement, when a dispute arises between the Sponsor and the Funding Board, which cannot be resolved, either party may request a dispute hearing according to the process set out in this section. Either party's request for a dispute hearing must be in writing and clearly state:

- A. The disputed issues;
- B. The relative positions of the parties;
- C. The Sponsor's name, address, project title, and the assigned project number.

In order for this section to apply to the resolution of any specific dispute or disputes, the other party must agree in writing that the procedure under this section shall be used to resolve those specific issues. The dispute shall be heard by a panel of three persons consisting of one person chosen by the Sponsor, one person chosen by the Director, and a third person chosen by the two persons initially appointed. If a third person cannot be agreed upon, the third person shall be chosen by the Funding Board's Chair.

Any hearing under this section shall be informal, with the specific processes to be determined by the disputes panel according to the nature and complexity of the issues involved. The process may be solely based upon written material if the parties so agree. The disputes panel shall be governed by the provisions of this Agreement in deciding the disputes.

The parties shall be bound by the decision of the disputes panel, unless the remedy directed by that panel shall be without the authority of either or both parties to perform, as necessary, or is otherwise unlawful.

Request for a disputes hearing under this section by either party shall be delivered or mailed to the other party. The request shall be delivered or mailed within thirty (30) days of the date the requesting party has received notice of the action or position of the other party which it wishes to dispute. The written agreement to use the process under this section for resolution of those issues shall be delivered or mailed by the receiving party to the requesting party within thirty (30) days of receipt by the receiving party of the request.

All costs associated with the implementation of this process shall be shared equally by the parties.

SECTION 40. ATTORNEYS' FEES

If either party brings litigation to enforce any term or condition of this Agreement, or as a result of this Agreement, the prevailing party shall be awarded its reasonable attorneys' fees together with necessary fees, expenses, and costs incurred for such litigation at both trial and appellate levels, as well as in obtaining execution of judgment. The reasonableness of such costs and attorneys' fees shall be determined by the court and not a jury.

SECTION 41. GOVERNING LAW/VENUE

This Agreement shall be construed and interpreted in accordance with the laws of the State of Washington. In the event of a lawsuit involving this Agreement, venue shall be proper only in Thurston County Superior Court. The Sponsor, by execution of this Agreement acknowledges the jurisdiction of the courts of the State of Washington.

In the cases where this agreement is between the Funding Board and a federally recognized Indian tribe, the following Governing Law/Venue applies:

- A. The State of Washington agrees that it shall initiate any lawsuit against a federally recognized Indian tribe arising out of or relating to the performance, breach or enforcement of this agreement in Federal Court. Interpretation shall be according to the law of the State of Washington. In the event that the Federal Court determines that it lacks subject matter jurisdiction to resolve the dispute between the State and Tribal Party, then the parties agree to venue in Thurston County Superior Court, but the parties agree that the matter shall not be pursued in superior court unless there is a Federal Court determination that it lacks subject matter jurisdiction.
- B. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from the action shall be binding and enforceable upon the parties. Any money judgment or

award against the Tribe, tribal officers and members, or the State of Washington and its officers and employees may not exceed the amount provided for in Section F- Project Funding of the Agreement.

- C. The Tribe hereby waives its sovereign immunity as necessary to give effect to this section, and the State of Washington has waived its immunity to suit in state court. These waivers are only for the benefit of the Tribe and State and shall not be enforceable by any third party or by any assignee or delegate of the parties. In any enforcement action, the parties shall bear their own enforcement costs, including attorneys' fees.

SECTION 42. SEVERABILITY

The provisions of this Agreement are intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of the Agreement.

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IAC & SRFB activities are intended to follow state and federal guidelines for nondiscrimination based on race, creed, color, national origin, age, marital status, gender, sexual orientation, residence, veteran status and disability. If you believe IAC-SRFB or its programs discriminate, please inform the Director at the address listed on page 2 of this publication. You may also contact the Equal Opportunity Program, US Dept. of the Interior, National Park Service, PO Box 37127, Washington, DC 20013-7127.